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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,225	11/26/2003	Takehiro Nishiie	17271	9178
23389	7590	06/06/2006	EXAMINER	
SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			KASZTEJNA, MATTHEW JOHN	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/723,225	NISHIIE, TAKEHIRO
	Examiner Matthew J. Kasztejna	Art Unit 3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 March 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5 and 7-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5 and 7-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 March 2006 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Notice of Amendment***

In response to the amendment filed on March 10, 2006, amended claims 1-2 and 5 and canceled claim 6 are acknowledged. The current rejections under 35 U.S.C 102(a) of claims 1-13 *stand*. The objection to the drawings are *withdrawn*. The rejection of claim 5 is under 35 U.S.C. 112, second paragraph, is *withdrawn*. The following reiterated grounds of rejection are set forth:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 15 and 7-13 are rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent Application Publication 2002/0004627 to Takase.

**In regards to claim 1**, Takase discloses a flexible tube of an endoscope comprising: a mesh tube 39, which is provided to an inserting portion of the endoscope, formed of at least two metal wires in the shape of a mesh, wound with an angle so that the metal wires are not disposed in the direction orthogonal to or parallel to the longitudinal direction of the inserting portion; and a contracting member 37 for generating contraction force in the longitudinal direction of the inserting portion generally with the same magnitude as the extension force in the longitudinal direction of

the inserting portion, generated due to the pressure difference between the inside and the outside of the endoscope (see Paragraphs 0048-0058).

**In regards to claim 2,** Takase discloses a flexible tube of an endoscope, wherein the contracting member covers the outer circumference of the mesh tube (see Fig 2).

**In regards to claims 3-4, 7-8 and 12-13,** Takase discloses a flexible tube of an endoscope wherein the covering tube is formed of a polymeric material, and wherein a single material or a blend of any of styrene resin, ester resin, olefin resin, and amide resin, is employed for the polymeric material (see Paragraphs 0059-0060).

**In regards to claim 5,** Takase discloses a flexible tube of an endoscope comprising: a spiral tube 39 formed of metal strips wound in the shape of a spiral; a mesh tube 38 formed of at least two metal wires in the shape of a mesh, wound with an angle so that the metal wires are not disposed in the direction orthogonal to or parallel to the longitudinal direction, for covering the outer circumference of the spiral tube; and a covering tube 37 for covering the outer circumference of the mesh tube; wherein the contraction force is generated generally with the same magnitude as the extension force of the flexible tube, generated due to the pressure difference in the event that the pressure in the inside of the endoscope becomes smaller than the pressure in the outside thereof, thereby suppressing the change in the length of the flexible tube (see Fig. 2 and Paragraph 0073).

**In regards to claims 9-11,** Takase discloses an endoscope comprising: a flexible tube including a mesh tube formed of at least two metal wires in the shape of a

mesh, wound with an angle so that the metal wires are not disposed in the direction orthogonal to or parallel to the longitudinal direction, and a covering tube for covering the outer circumference of the mesh tube; a pressure regulating valve for maintaining the pressure in the inside of the endoscope within a predetermined value by releasing the pressure regulating valve in the event that the pressure in the inside of the endoscope exceeds the predetermined value as compared with the pressure in the outside thereof; and contraction force generating means for generating the contraction force of the flexible tube generally with the same magnitude as the extension force of the flexible tube generated due to the pressure difference in the event that the pressure in the inside of the endoscope becomes smaller than the pressure in the outside thereof (see Fig. 2 and Paragraphs 0073 and 0048-0056).

#### ***Response to Arguments***

Applicant's arguments filed March 10, 2006 have been fully considered but they are not persuasive.

Applicant states that although Takase discloses a mesh, there is no disclosure of the orientation of the metal wires that make up the mesh. However, Takase clearly states that the mesh 38 is a metal woven like a net and used to externally cover the spiral tube 39. The net-like mesh could inherently be constructed so that the metal wires are not disposed in a direction orthogonal to or parallel to a longitudinal direction of the inserting portion as is well known in the art. Furthermore, applicant states that there is no disclosure of the contracting member generating a contraction force with the same general magnitude as the extension force. However, as broadly as claimed.

Takase discloses a contracting member 37 which inherently generates a contraction force in the longitudinal direction of the inserting portion *generally* with the same magnitude as an extension force in the longitudinal direction of the inserting portion, generated due to a pressure difference between an inside and an outside of the endoscope (see Paragraphs 0048-0058).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Kasztejna whose telephone number is (571) 272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJK *MK*  
5/24/06



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CRY PATENT EXAMINER  
GROUP 3700